

## RULES AND REGULATIONS

## Title 14—Aeronautics and Space

## CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-127]

## PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS

## Revocation of Authority to Deviate

For the reasons set forth in a document establishing new procedures governing exemptions from the Department of Transportation's regulations pertaining to the transportation of hazardous materials appearing elsewhere in this Part III of the FEDERAL REGISTER, 14 CFR 103.5 is revoked effective October 16, 1975.

(49 U.S.C. 1421(c), 49 CFR 1.53(h)).

Issued in Washington, D.C., on October 10, 1975.

JAMES T. CURTIS, Jr.,  
Director,

Materials Transportation Bureau.

[FR Doc. 75-27804 Filed 10-14-75; 8:45 am]

## Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION  
SUBCHAPTER N—DANGEROUS ARTICLES

[Docket No. HM-127]

## PART 146—TRANSPORTATION OR STORAGE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

## Exemption Procedures

For the reasons set forth in a document establishing new procedures governing exemptions from the Department of Transportation's regulations pertaining to the transportation of hazardous materials appearing elsewhere in this Part III of the FEDERAL REGISTER, 46 CFR 146.02-25 is amended as follows effective October 16, 1975:

## § 146.02-25 [Amended]

1. Paragraph (a) is amended by adding the words "Except as provided in paragraph (f) of this section," at the beginning thereof.

2. Paragraph (d) is amended by adding the words "Except as provided in paragraph (f) of this section," at the beginning thereof.

3. By adding a new paragraph at the end thereof to read as follows:

(f) Petitions for exemptions or any other form of administrative relief from any requirement of this Part 146 shall be prepared and submitted to the Director, Office of Hazardous Materials Operations, in accordance with 49 CFR Part 107, Subpart B.

(46 U.S.C. 170(11), 49 CFR 1.53(f)).

Issued in Washington, D.C., on October 10, 1975.

JAMES T. CURTIS, JR.,  
Director,

Materials Transportation Bureau.

[FR Doc. 75-27805 Filed 10-14-75; 8:45 am]

## Title 49—Transportation

## SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

## CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-127]

## HAZARDOUS MATERIALS TRANSPORTATION

## Establishment of Exemption Procedures

On August 4, 1975, the Office of Hazardous Materials Operations published in the FEDERAL REGISTER (49 CFR 32758) a notice of proposed rule making in which it proposed a new set of procedures to be followed in applying for and in the processing of requests for exemptions from the Department of Transportation's regulations governing the transportation of hazardous materials. These procedures would implement the statutory requirements of section 107 of the Hazardous Materials Transportation Act (Title I of Pub. L. 93-633).

As provided in that notice of proposed rule making, interested persons were given until the close of business on September 12, 1975, to submit comments and a public hearing was held in Washington, D.C., on August 26, 1975. In response to the considerable interest expressed by persons shipping and transporting hazardous materials via aircraft in or to Alaska, a second public hearing was scheduled for Anchorage (40 FR 37247, August 26, 1975) and held there on September 2, 1975. The Materials Transportation Bureau has given due consideration to the comments received and has adopted the proposal with the modifications set forth below.

## GENERAL ARRANGEMENT

As proposed the exemption procedures would have been Subpart A of Part 107. The Bureau has decided to move them to Subpart B and use Subpart A for general procedural provisions applicable to the hazardous materials program. A section on definitions and one covering request for confidential treatment of documents are included in this rule making. Other general procedural provisions will be added to Subpart A as they are developed. For the convenience of those who may wish to make a direct comparison between the proposed provisions and the final provisions, a table of comparative section numbers is set forth below:

Proposed §	Final §
107.1.....	107.101.
107.3.....	107.101.
107.5.....	107.103, 107.105, and 107.113.
107.7.....	107.107.
107.9.....	107.115.
107.11.....	107.109.
107.13.....	107.117.
107.15.....	107.119.
107.17.....	107.123.

## PROCESSING PROCEDURES

Several comments addressed the proposed provision that would have allowed any interested person to meet informally with a Bureau official to discuss an exemption application or the action taken

on an application. For the most part those comments expressed concern that this would allow the presentation of adverse information and arguments without opportunity for rebuttal. Some of the comments went on to suggest remedial safeguards, which tend to be formal, adversary and time-consuming.

The Bureau shares the concern expressed in those comments. It was this concern that accounts for the requirement in the proposed regulations which would have required a memorandum of all such meetings to be placed in the public docket. After reflecting on the comments, the Bureau is less than convinced as to the adequacy of the memorandum to docket provision.

For these reasons and in light of the opportunity being provided for interested persons to present their views on individual exemption applications through the public procedure process being implemented, the Bureau has decided not to adopt the proposed informal meeting provision. All comments received by the Bureau regarding an application will be available in the docket to other interested persons who comment, the applicant or any other person for such rebuttal as any of them may desire to submit.

Recommendations asking that all interested persons who comment on an application be required to serve copies of their comments on the applicant and those suggesting that the regulations should prescribe the form and style of comments are rejected as totally inconsistent with the statutory requirements governing the opportunity that must be offered the public for expressing their views informally on each application. As noted in § 107.123, the applicant or any other member of the public may obtain copies of any docketed document.

Several comments suggested that the regulations should set the public comment period on applications at 30 days. While the Bureau feels that 30 days will probably be the appropriate comment period for many, if not most, applications, it does not believe that the flexibility allowed by statute in this regard should be negated by a rigid regulation.

In finalizing these procedures, the Bureau is transferring into Appendix B the standard conditions previously made applicable to special permits by 49 CFR 171.6 where they will be applicable to all exemptions to be issued under these new procedures. Based on the recommendations of several commenters, it has also included in Appendix B and is making applicable to all future exemptions for carriage of hazardous materials by aircraft, a restatement of the standard terms previously contained in 14 CFR 103.5.

The proposed provision stating that the Director, OEHMO, in acting on an application "may initiate rule making . . . in addition to or in lieu of granting or denying the application" drew diverse comments. Suggestions were made that the words "or in lieu of" should be dropped; that exemptions should automatically become regulations after two years or after having been once renewed; and that all existing exemptions as well

as applications should be reviewed with a view to rule making. The Bureau appreciates the need for codifying into permanent regulations those exemption-tested concepts proven to be safe. (See Docket HM-128, 40 FR 45197, October 1, 1975.) It feels, however, that this objective is not to be achieved by prescribing a regulation commanding it to occur. Rather, its attainment is a function of administrative effort and realistic, properly balanced procedures. For these reasons, the Bureau is adopting this provision as proposed.

#### PROCESSING TIME

Comments from a number of holders of special permits and existing exemptions and from others who are potential future applicants for exemptions contested the proposed provision which would have required all applications (except those seeking priority treatment on the basis of an existing emergency) and all applications for renewals to be submitted at least 120 days before the requested effective date or expiration date. Those comments suggested shortening the period to 45, 60, 75, 80, or 90 days. In a related comment it was recommended that should the Bureau adopt the mandatory 120-day advance filing date, it should also allow for priority processing of an application which may not qualify as an emergency but for which there are compelling reasons for expedited handling after the public comment period has closed.

As discussed elsewhere in this preamble, a new section has been added governing all emergency exemptions. Also, as discussed elsewhere, the mandatory lead time of 120 days for renewal applications has been reduced to 60 days. With respect to original applications, the Bureau feels that, as a general proposition, it must have the 120-day period available to conduct the statutorily required public proceedings and to evaluate the application, its safety analysis and the public comments thereon. This is not to say that the Bureau is going to consume the full 120 days in the processing of each application. Each will be processed as expeditiously as practicable.

In view of these comments and considerations, § 107.103(b)(10) and (c) pertaining to non-emergency, original applications have been changed so as to provide the following. The provision dealing with the 120-day advance filing date has been modified from mandatory to advisory by changing the word "must" to "should". A provision has been added stating that applications are processed in the order received unless the Director, OHMO, is persuaded by information the applicant may submit in his application that priority processing is called for after the public proceeding on the application is completed.

Several comments asserted that the proposed provision stating that the administrative review of applications for completeness and conformity would be made within 30 days after its receipt should be changed by reducing that

period or making it run concurrently with the public comment period.

As discussed elsewhere, the period has been reduced to 15 days for renewal applications. With respect to original applications, as in the case of the total 120-day processing period, the Bureau feels that this 30-day period must be available when the volume of new applications, complexity of particular applications and similar administrative considerations so require. Although the Bureau is adopting the 30-day figure as proposed, it should be noted that § 107.107 does not state that the Bureau is going to hold each application for 30 days before publishing the required Federal Register notice. That notice will be filed with the Federal Register for publication as quickly as the Bureau is satisfied that an application is complete and in conformity with the requirements of § 107.103(b). It is anticipated that, generally, such filings will be made well before the thirtieth day. What § 107.107 does inform the applicant is that if his application is not returned within 30 days, he can assume that it has been found complete and in conformity with § 107.103(b) and that the public comment process has been initiated.

#### RENEWALS

A number of comments focused on those parts of the proposal which would have required applications for renewals to be submitted and processed in the identical manner as applications for initial issuance. There were three major points made by commentators in this regard. First, they asserted that an applicant for renewal should not be required to resubmit what is frequently extensive technical data which the Bureau already has on file. Second, they expressed the opinion that since that data had already been through the Bureau's evaluation and approval process, it should not require the Bureau 120 days to review it on renewal. And third, they pointed out that holders of exemptions (and other existing forms of administrative relief from the hazardous materials regulations) which will expire between the proposed effective date (October 16, 1975) and 120 days thereafter may be technically precluded from the opportunity to obtain a renewal without a lapse because, under existing procedures, they would not have applied 120 days in advance of the expiration date.

Modifications have been made in response to each of these three lines of comments. The principal change has been to provide a separate section governing the filing of applications for renewal (§ 107.105) and limiting the applicability of the proposed section on applications to applications for initial issuance (§ 107.103). The Hazardous Materials Transportation Act requires that "each person applying for . . . an exemption or renewal shall, upon application, provide a safety analysis . . . to justify the grant of such exemption." The Bureau agrees that no useful purpose will be served by refile of data

which is already part of the public record and believes that the statutory objective can best be served in the case of renewal applications by requiring the applicant to review his earlier submissions and certify their continued accuracy and applicability and update that data as necessary. In all cases, a renewal application should be accompanied by a report on the applicant's activities covered by the exemption since its issuance, including all accidents or incidents relating to those activities. New § 107.105 (a) so provides. The Bureau also agrees that review of renewal applications should not be as time-consuming as evaluation of initial applications even though public notice and comment proceedings are required in both cases. Accordingly, new § 107.105(b) provides, in advisory rather than mandatory terms, that applications for renewals should be submitted at least 60 days before the expiration date of the exemption.

In conjunction with this shortening of the renewal processing period from 120 to 60 days, the administrative review period provided for in § 107.107 has also been shortened from 30 to 15 days and a new § 107.105(c) has been added to expressly provide for the continuation of an exemption in the unlikely event that processing of a timely filed renewal application is not completed before the scheduled expiration date. These changes do not, of course, preclude earlier submissions. Moreover, renewal applications containing requests for amendments will be processed in the same manner as original applications and therefore should be submitted accordingly.

So that applicants for renewals who file during the first 60 days after the effective date of these procedures will not be prejudiced by the new requirements governing the contents of renewal applications, § 107.105(d) has been added to provide that renewal applications received during that period will be processed if they meet the content requirements under the Department's procedures in effect immediately prior to the effective date of these new procedures. The processing of such applications will, of course, include the public notice and opportunity for public comment steps described in § 107.109(a).

#### PROCESSING OF EMERGENCY APPLICATIONS

The vast majority of those who commented on the emergency exemption portion of the proposed regulation were concerned with its application to air commerce. The comments of shippers and carriers alike spoke with favor about the timely and efficient treatment they had received under 14 CFR 103.5 when faced with a pressing need for relief from the regulations. While the Bureau agrees that there are many well-tested and worthwhile features to the 14 CFR 103.5 procedures, some of which are being adopted in these regulations, it must be recognized that 14 CFR 103.5 allowed two bases for administrative relief from the hazardous materials regulations applicable to air commerce. One basis was

"emergency" which was an overall concept is transferable to these regulations for implementing § 107 of the Hazardous Materials Transportation Act. The other basis was the impracticability of other forms of transportation. Regardless of the logic and soundness of this second basis, it is not by itself recognized by § 107 of the Act as a legitimate basis for the Bureau declaring that an emergency exists. The necessity to eliminate this second basis for emergency exemptions has caused great concern by interests in Alaska which has traditionally accounted for more than 75% of all relief granted under 14 CFR 103.5.

After reviewing the case-by-case history of actions taken under 14 CFR 103.5, the Bureau, on September 26, 1975, initiated rule making (40 FR 45197, October 1, 1975) based on demonstrated favorable safety experience thereunder. It is expected that such regulations will eliminate the need for several classes of reoccurring emergency exemptions for Alaska and other remote areas where a cargo only aircraft is the only practicable means of transportation. To allow for finalization of this related proposed rule making, the Bureau is adopting certain transition procedures set forth in § 107.125 which will enable it to respond to the special situation in Alaska. To ensure that the needs of the citizens of Alaska are properly served during the transition period which the Bureau expects to be completed by January 16, 1976, the FAA and the Bureau have arranged for all essential exemption activities and decisions to be made in Alaska. For example, the "official designated by the Director, OHMO," to perform certain Bureau functions under § 107.125 will be stationed in the FAA Regional Office in Anchorage.

The Bureau feels that these steps, when fully completed, together with the modifications made in these regulations, will result in an accommodation of the well-articulated needs of persons in Alaska and at the same time fully satisfy the procedural requirements prescribed by the Hazardous Materials Transportation Act.

In response to recommendations that applications for emergency exemption be treated separately from general applications, the Bureau has grouped all provisions relating to the application for and processing of emergency exemptions into a separate distinct section (§ 107.113). In so doing and in response to related comments, provision has been made for making application through FAA District Offices in the case of air commerce and for 24-hour telephone numbers for the other modes of transportation.

#### DETERMINATION OF EXISTING EMERGENCY

The proposed criteria for determinations as to whether or not an emergency exists evoked a wide range of comments. At one extreme was a recommendation that the proposed criteria for making determinations be converted to flat declarations that an emergency does in fact exist when, in the view of an applicant, any of the described conditions occur

(i.e., risk to life or property or the chance of serious economic loss). At the other extreme was an assertion that an emergency exists only if there is "an imminent risk of a substantial injury to human health, welfare or life itself which is not outweighed by the public's statutory right to know of and participate in the pending exemption proceeding." The author of the latter comment would further restrict his narrow concept of emergency by providing that "no relief should be available where it appears that the applicant himself has induced or provoked the alleged emergency by unnecessarily delaying his filing." To deny an applicant the means to abate a danger to his own "health, welfare or life" is an unreasonable penalty to impose for late filing of an application. Such a penalty is unconscionable when, as in most such cases, the danger is to the health, welfare or life of innocent third parties rather than that of a dilatory applicant.

In between these extremes were suggestions that express recognition should be given to cost/benefit considerations and seasonal movement of products such as agricultural chemicals, and that lack of other forms of transportation should be considered to be an emergency authorizing the use of aircraft along the lines of present 14 CFR 103.5. A few commentators stated that there was a need for the criteria to be more specific, particularly with regard to the term "serious economic loss". One such commentator sought specificity as to whose economic loss (e.g., shipper, carrier, consignee, general public) is to be considered under the criteria. Another commentator asserted that the criteria were not sufficiently specific to inform him as to how he could frame an application guaranteed to qualify it for emergency treatment. Another commentator complained that an emergency had not been "totally defined".

One commentator stated that there appeared to be no reason for the parenthetical expression in the protection of life and property criteria which excludes "the hazardous material to be transported" from the class of property for which an emergency exemption can be sought. This exclusion was proposed because the Bureau means to limit emergency determinations under that criterion to situations in which there is an urgent need for the hazardous material concerned to be (1) delivered elsewhere in order to alleviate a condition posing a threat to life or property, or (2) moved from its present location in order to protect life or property from the hazards the material may present.

The commentator who would limit "emergencies" to situations involving risk to health, welfare or life on the theory that the governing statute (§ 107 (d) of the Hazardous Materials Transportation Act) so requires, reads into the statute words of limitation that simply are not there. Those who seek specificity to precisely cover a particular factual situation would have the Bureau so narrow the criteria as to risk freezing out other legitimate emergency situations that surely will arise.

Several comments concerned the manner in which the emergency determination authority should be exercised under the proposed criteria. Although it does not consider it necessary or appropriate for inclusion in the regulations, the Bureau finds considerable merit in one commentator's admonition that "the finding that an emergency exists must result from a balancing of all of the relevant information available to the Department." The Bureau intends to do precisely this in making emergency determinations, particularly those which will be made under the "serious economic loss" criteria of § 107.115(b). While the Bureau fully anticipates that its emergency determinations under the "serious economic loss" criteria will nearly always be limited to situations in which the hazardous material concerned needs to be delivered elsewhere to prevent serious economic loss, it recognizes also the possibility of that infrequent instance when a manifest injustice or absurdity could result if the criteria is literally limited to needed deliveries.

Various elements of the Department of Defense (DOD) expressed the view that certain of their shipments of hazardous materials which require exemptions when transported by commercial carriers should be entitled to emergency exemptions in the interest of national defense. Two U.S. Army commentators recommended that such emergency exemptions should be granted for "shipments to be made by or for the DOD in support of the national defense program, when certified by the DOD as essential and critical." The Naval Sea Systems Command requested a "grandfather clause for DOD Special Permits in order that the transportation of DOD weapons systems/components will not be disturbed."

The Bureau does not find authority in law which would authorize it to adopt any of the DOD proposals for grandfather clauses or DOD certifications. The responsibility vested in the Secretary of Transportation by § 107(d) of the Hazardous Materials Transportation Act to determine that an emergency exists must be carried by him or by one of his subordinates within his Department. It cannot be transferred horizontally to another Executive Department. In addition, the Bureau believes that those determinations can only be made case-by-case on the basis of existing circumstances.

Comments from the Air Force question the need for requiring them to reapply biennially for an exemption issued in 1961 for an indefinite period. The provisions of §§ 107(a) and 114(b)(2) of the Hazardous Materials Transportation Act are controlling on this point. Section 114 (b)(2) operates to terminate the Air Force exemption and any other similar indefinite exemptions on January 4, 1977, unless renewed before that date, in accordance with regulations issued under § 107 of the Act. That section, under which the current regulations are being issued, does not allow any exemption or renewal thereof to be issued for more than a two-year term. As their comments suggest, a properly framed petition for

rule making based on their satisfactory safety experience under the exemption they now hold may well be a more satisfactory way for the Air Force to proceed. Other elements of DOD may also find a well-reasoned petition for rule making preferable to repeated applications for exemptions. It should also be recognized that transportation of hazardous materials aboard DOD's own vessels, vehicles and aircraft does not require either rule making or exemptions since such operations are not considered to be in commerce.

After considering the various points advanced by the commentators on the criteria for determining whether an emergency exists, the Bureau finds itself in concurrence with the commentator who took the position that:

The regulations implementing the exemption power should . . . refrain from specific definition of an "emergency", for the very nature of emergencies is their unforeseen timing and character. The need for expedited treatment as an emergency matter is best left to the judgment and discretion of the Materials Transportation Bureau and its staff, to determine on a case-by-case basis as each situation arises. Attempts at definition of an indefinable concept will only serve to frustrate the equitable exercise of this power, by boxing it into criteria that fail to accommodate every situation that will be encountered.

#### APPEALS

Several comments noted the lack of a specific appeal procedure for those applicants whose applications may be denied. One of the commentators went on to suggest that perhaps the reconsideration procedures in Part 102 pertaining to rule making should be available for appealing exemption denials. The other commentators recommended the addition of specific appeal procedures to this body of exemption regulations. The Bureau believes this latter approach to be preferable and therefore has added a new § 107.121 expressly providing for the appeal of various actions taken under these exemption regulations to the Director of the Materials Transportation Bureau whose decisions will be administratively final.

#### CONFIDENTIAL INFORMATION

A few commentators criticized the proposed regulations for not being specific as to the disposition of documents for which requested confidential treatment is denied by the Bureau. Several of those commentators expressed the view that an applicant faced with an adverse determination on his request for confidentiality should have the option of withdrawing his application. The Bureau agrees with both of these views. Therefore, it has established more comprehensive procedures governing requests for confidential treatment. These procedures in new § 107.3 will apply to all documents submitted with respect to hazardous materials, not just applications for exemptions. They provide for notice to an applicant when his request for confidentiality is denied and an opportunity for him to respond or withdraw his application before the Bureau

discloses the information. Section 107.117 concerning withdrawal of a pending application has been modified to expressly allow an applicant to recover the contested documents if he withdraws his application before it is finally determined. These changes do not go so far as to allow the return of such documents after an application has been finally denied as was suggested by one commentator. The Bureau is not prepared to authorize withdrawal of documents once they have served as a basis for a completed official action on an application for exemption, be it an approval or a denial.

Also, in response to comments, the Bureau has modified § 107.123(b), pertaining to what the Bureau makes available for public inspection, by deleting the misleading reference to materials "not relevant to the petition" and by adding a citation to the Department of Transportation's Freedom of Information Act regulations.

#### PARTIES TO EXEMPTIONS

A large number of comments made the point that a procedure should be established for extending the terms of an exemption granted to one person to other persons in like circumstances without requiring a complete duplication of the various steps and evaluations performed with regard to the original application. The arguments in support of this view are in many respects similar to those which justified simplification of the renewal process.

The procedures suggested by the commentators were for the most part analogous to the "registration" concept that has been employed for the past few years by the Hazardous Materials Regulations Board under its special permit program. Under that program, once the efficacy of a proposal susceptible of being performed by persons in addition to the applicant was established and a special permit (i.e., exemption) issued, the Board would allow other persons to "register" (i.e., become a co-holder) under that special permit.

The Bureau agrees that provision should be made for a similar process under these new exemption procedures. However, rather than merely codifying the earlier procedures, the Bureau has decided to incorporate certain modifications to bring them in line with the intent and purpose of the Hazardous Materials Transportation Act and in particular § 107 thereof. Since § 106 of the Act uses the term "registration" to describe an entirely different concept, the term "party to an exemption" has been adopted. New § 107.111 sets forth the requirements for applying for status as a party to an exemption and describes the Bureau's processing thereof. By filing an application to become a party to an exemption, the applicant constructively adopts as his own the technical and safety information submitted by the applicant for the exemption and if he is granted status as a party to the exemption he is bound by the limitations and conditions that apply to the initial holder of the exemption and

will be identified separately as a holder on the exemption documents issued to him.

#### NATIONAL TRANSPORTATION SAFETY BOARD COMMENTS

On September 12, 1975, the closing day for comments on the proposed exemption regulations, the Chairman of the National Transportation Safety Board (NTSB) filed as comments to the docket an advance copy of two formal NTSB recommendations subsequently delivered to the Secretary of Transportation on September 25, 1975.

Both of the NTSB's recommendations stem from its conclusion that "the proposed exemption procedures do not fulfill the intent of Section 107 of the Hazardous Materials Transportation Act, which calls for 'a safety analysis as prescribed by the Secretary to justify the grant of such exemption.'" The NTSB does not believe that the information required by proposed § 107.5(b) (4)-(7) and (9) [§ 107.103(b) (4)-(7) and (9) in these final regulations] will result in a clear presentation of specific safety concerns and does not constitute a safety analysis. In its view each applicant should be required to "prepare a formal safety analysis statement which would--

"(1) Identify the ways persons could be injured with respect to the quantity and form of the materials to be transported,

"(2) Identify the specific risks for which the applicant considers it necessary to establish safety control measures, based on § 107.9) (i) and (ii) of the proposed exemption procedures [§ 107.103(b) (9) (i) and (ii) of these final regulations], and

"(3) Describe measures which would eliminate these risks." In addition to assuring that such formal statements would cause applicants to focus on safety problems, the NTSB believes that the mass of data that would be derived could be used as base data in future risk analyses.

Having expressed these views, the NTSB proceeded to recommend to the Secretary of Transportation that he

"(1) Prescribe the content and form for a safety analysis statement to accompany applications for exemptions to the Materials Transportation Bureau's regulations. (Recommendation HM-75-1) (Class I).

"(2) Revise proposed 49 CFR 107.5(b) (9) to require submission of a safety analysis statement, in the form prescribed by the Secretary of Transportation, to support the applicant's belief that his proposed exemption will achieve the level of safety specified in 49 CFR 107.5 (b) (9) (i) and (ii). (Recommendation HM-75-2) (Class I).

The provisions of the Bureau's proposed procedures cited by the NTSB require an applicant to prepare (1) a detailed technical description of his proposal, (2) a quantitative and qualitative chemical analysis of the material concerned, (3) an analysis of all related shipping experience and accident experience, (4) a statement of the special transportation controls needed for the

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mode of transportation proposed to compensate for any increased risks that would be encountered should the exemption be granted, (5) a schedule of events under the proposal, and (6) a statement setting forth the applicant's analysis of why he believes his proposal will achieve a level of safety at least equivalent to that provided by the regulations or, if there is no regulatory standard, will adequately protect against risks to life and property which are inherent in the transportation of hazardous materials. These were the items of information and the analyses that the Bureau considered necessary for it to properly evaluate a proposal. Notwithstanding the construction assigned to the term "safety analysis" and the intent imputed to § 107 of the Hazardous Materials Transportation Act by the NTSB, the Bureau is of the firm belief that the information gathering and analytical requirements which it proposed with respect to applications for exemptions fulfills the "intent" of § 107 and will provide the Bureau with the information it needs to evaluate the proposals and establish the proper regulatory safeguards in those cases in which an exemption is granted.

In finalizing these regulations, the Bureau has modified items (7) and (9) in the list of required application contents in light of the NTSB comments. Item (7) has been amended to require an applicant to identify increased risks likely to result if an exemption is granted and specify the safety control measures necessary to compensate for them. Item (9), which requires a statement from the applicant as to why he believes his proposal will achieve the required statutory level of safety, has been amended to require that statement to cover the safety control measures proposed by the applicant. These changes, as the NTSB suggested, should help assure that applications focus on the safety problems which need to be considered.

The Bureau, however, cannot fully agree with the NTSB that each applicant should be required to "identify the ways persons could be injured with respect to the quantity and form of the materials to be transported." The NTSB approach applied literally would mean that a recent applicant seeking Bureau approval for a different (and what may well be a better) technique for applying glue in the fabrication of several different styles of hazardous material specification fiberboard boxes would have been confronted with an overwhelming task. One style of the fiberboard boxes alone is used to carry hundreds of different hazardous materials. Under the NTSB proposal, the applicant would have been required to identify the ways persons could be injured with respect to each of those hundreds of hazardous materials. While it is undoubtedly true that "the data derived from this procedure could be used as base data in future risk analysis", it is more likely that the applicant would have abandoned the effort. It is the Bureau's view that the risks to be identified and addressed by the applicant, by those who choose to com-

ment on the application, and by the Bureau staff, are those risks that would arise as a direct result of granting the exemption. In rejecting this part of the NTSB's suggested changes, the Bureau does not mean to give the impression that it finds the suggestion totally without merit. In particular cases, the Bureau foresees requiring an applicant to supply the full range of information which the NTSB would require for all cases. The obtaining of such information on a case-by-case basis is clearly provided for in § 107.109(b) [proposed § 107.11(b)], which may have been overlooked in the formulation of the NTSB's comments.

Recommendation HM-75-1 calls for "a safety analysis statement to accompany applications for exemptions to the Materials Transportation Bureau's regulations." In addition to regulations pertaining to hazardous materials, the Bureau also prescribes and administers regulations under the Natural Gas Pipeline Safety Act of 1968. Although it would appear that the NTSB intended to include those regulations within the coverage of Recommendation HM-75-1, exemptions from those regulations are beyond the scope of this rule making and are governed by a different statutory standard.

Except as stated above, the Bureau is satisfied that the proposed regulations, modified as described in this preamble, reflect and accommodate the NTSB's Recommendations HM-75-1 and HM-75-2. The Bureau also believes that through the public notice and comment procedures being established, the NTSB will be afforded new opportunities to apply its insight and expertise to the matter of the transportation of hazardous materials in commerce.

#### OTHER MATTERS

Two comments addressed the proposed requirement that applications state the composition and percentage of each chemical which is the subject of an exemption application. Both commentators felt that information on traces or insignificant amounts need not be included in an application. One commentator would set the floor at 5%. The Bureau understands and appreciates the commentator's point. While it is prepared to follow a general practice of accepting applications which provide the specified information with respect to all components which make up 1% or more of a mixture or solution, the Bureau believes that making this practice a fixed rule may, on occasion, induce an applicant to omit essential information.

Section 107.109(c) has been modified to accommodate suggestions that an applicant whose application is denied should be given the reasons for the denial.

Comments on the proposed termination and suspension provisions asserted that an exemption should not be subject to suspension for failure of the holder to adhere to its terms unless those terms are "repeatedly violated". The Bureau believes that such a change would effec-

tively negate any therapeutic effect that is otherwise likely to result from the establishment of this sanction. A related suggestion stated that an immediate amendment rather than suspension is the appropriate administrative action to be taken when new information shows that an exemption does not adequately protect against risks to life and property. The Bureau believes that this might be so in some cases. In others, a suspension pending actual determination of an appropriate amendment may be necessary. It was to provide for this flexibility that the proposed suspension provision in question was cast in discretionary terms. The Bureau sees no reason to change it.

One commentator questioned the legality of giving packaging manufacturers, reconditioners, and other similarly situated persons the right to apply for exemptions under the proposed regulations. The commentator stated that through legislative oversight such persons were not expressly mentioned in § 107 of the Hazardous Materials Transportation Act as being potential applicants for exemptions. The commentator also correctly pointed out that a bill (S. 2024, 94th Conf.) on this subject has been introduced in the Senate. That bill had its origins in the Bureau which is of the view that its enactment would merely clarify the matter and that legislative validation of the questioned class of potential applicants is not required. A person's right to petition an agency for relief from a regulation of that agency which directly affects that person is so well established as to be beyond question.

Several editorial adjustments have been made in response to comments and to be consistent with the changes discussed elsewhere in this preamble.

#### EFFECTIVE DATE

Since these amendments establishing new exemption procedures and making related changes to existing regulations are procedural rather than substantive and because of the need for immediate public guidance with respect to the new exemption procedures, they are being made effective in less than 30 days after publication in the FEDERAL REGISTER. As proposed in the notice of proposed rule making issued on July 30, 1975 (40 FR 32758, August 4, 1975), these amendments become effective on October 16, 1975.

#### RELATED CHANGES TO OTHER TITLES

Elsewhere in this edition of the FEDERAL REGISTER, 14 CFR 103.5 is being revoked and 46 CFR 146.92-25 is being amended to conform with the adoption of these new exemption procedures.

In consideration of the foregoing, 49 CFR Subtitle B, Chapter I, is amended as follows:

1. In Subchapter B—Hazardous Materials, a new Part 107 is established to read as follows:

#### PART 107—PROCEDURES

##### Subpart A—General Provisions

Sec.	
107.1	Purpose and scope.
107.3	Definitions.
107.5	Request for confidential treatment.

**Subpart B—Exemptions**

Sec.	
107.101	Purpose and scope.
107.103	Application for exemption.
107.105	Application for renewal.
107.107	Administrative review.
107.109	Processing of application.
107.111	Party to an exemption.
107.113	Application for and processing of emergency exemption.
107.115	Determination of existing emergency.
107.117	Withdrawal.
107.119	Termination.
107.121	Appeal.
107.123	Availability for public inspection.
107.125	Transition period and procedures for certain air commerce situations in Alaska.

**APPENDIX A**—List of Department of Transportation officials through whom applications for exemptions seeking priority treatment on the basis of existing emergencies may be initiated by telephone

**APPENDIX B**—Standard conditions applicable to exemptions

**Authority:** 18 U.S.C. 831-835, 46 U.S.C. 170 (11), 49 U.S.C. 1421(c), 49 U.S.C. 1806, 49 CFR 1.53(c)–(h).

**Subpart A—General Provisions**

**§ 107.1 Purpose and scope.**

(a) This part prescribes procedures utilized by the Materials Transportation Bureau and the Office of Hazardous Materials Operations in carrying out their duties under the laws pertaining to the transportation of hazardous materials.

(b) This subpart defines certain terms and prescribes procedures that are applicable to each proceeding described in this part.

**§ 107.3 Definitions.**

As used in this part—

“OHMO” means the Office of Hazardous Materials Operations.

“MTB” means the Materials Transportation Bureau.

**§ 107.5 Request for confidential treatment.**

(a) If any person filing a document with the OHMO claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 (1970)), is information referred to in 18 U.S.C. 1905 (1970), or is otherwise exempt by law from public disclosure, and if that person requests the OHMO not to disclose the information, that person shall file together with the documents a second copy of the document from which has been deleted the information for which confidential treatment is claimed. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, that person must include a statement as to why the information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information de-

leted, the OHMO may assume that there is no objection to public disclosure of the document in its entirety.

(b) The OHMO retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the OHMO to deny the claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

**Subpart B—Exemptions**

**§ 107.101 Purpose and scope.**

This subpart prescribes procedures by which persons who are subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 may obtain administrative relief therefrom on the basis of equivalent levels of safety or levels of safety consistent with the public interest and the policy of the Hazardous Materials Transportation Act.

**§ 107.103 Application for exemption.**

(a) Any person who is subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 may apply to the Director, OHMO, for an exemption from those requirements.

(b) Each application filed under this section for an exemption must—

(1) Be submitted in triplicate to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Exemptions Branch;

(2) Set forth the text or substance of the regulation from which the exemption is sought;

(3) State the name, address, and telephone number of the applicant;

(4) Include a detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous exemptions, approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information;

(5) State the chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

(6) Describe all relevant shipping and accident experience;

(7) Specify the proposed mode of transportation, identify any increased risks that are likely to result if the exemption is granted, and specify the safety control measures which the applicant considers necessary or appropriate to compensate for those increased risks;

(8) Specify the proposed duration or describe the proposed schedule of events for which the exemption is sought;

(9) State why the applicant believes the proposal including any safety control measures specified by the applicant will achieve a level of safety which—

(i) Is at least equal to that specified in the regulation from which the exemption is sought, or

(ii) If the regulations do not contain a specified level of safety, will be consistent with the public interest and will adequately protect against the risks of life and property which are inherent in the transportation of hazardous materials in commerce;

(10) If the applicant seeks to have the application processed on a priority basis, set forth the supporting facts and reasons.

(c) Unless the Director, OHMO, finds that there is good reason for priority processing of an application, each application is processed in the order in which it is received. To permit timely consideration, an application should be submitted at least 120 days before the requested effective date.

(d) If the applicant wishes to claim confidential treatment for any information contained in the application, the procedures set forth in § 107.5 apply.

**§ 107.105 Application for renewal.**

(a) Each application for the renewal of an exemption issued under this subpart must—

(1) Be submitted in triplicate to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Exemptions Branch;

(2) Identify the exemption for which a renewal is requested;

(3) State the name, address, and telephone number of the applicant;

(4) Include (i) a certification by the applicant that the descriptions, technical information and safety assessment submitted in the original application, or as may have been updated by any subsequent application for renewal, remain accurate and correct, or (ii) such amendments to the previously submitted descriptions, technical information and safety assessment as is necessary to update them and assure their accuracy and correctness;

(5) A statement describing all relevant shipping and all accident experience that has occurred in connection with the exemption since its issuance or most recent renewal or, if no accidents have been experienced, a certification to that effect. This statement must include the approximate number of shipments made or packages shipped, as the case may be, and the number of shipments or packages involved in any loss of contents, including loss by venting when transporting a compressed or cold temperature gas.

(b) To permit timely consideration, an application for renewal should be submitted at least 60 days before the expiration date of the exemption.

(c) If, at least 60 days prior to the expiration of an existing exemption of a continuing nature, the holder files an application for renewal which is complete and conforms with the requirements of this section, the exemption will not be considered to have expired until the application for renewal has been finally determined.

## RULES AND REGULATIONS

(d) Paragraphs (a) and (b) of this section notwithstanding, an application received after October 15, 1975, and before December 18, 1975, seeking the renewal of a special permit, exemption, waiver, deviation or any other similar form of administrative relief from the requirements of Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 issued under procedures superseded by this subpart will be processed in the manner prescribed in this subpart if that application contains all of the information that would have been required for renewal under the superseded procedure. An application received after December 15, 1975, seeking renewal of administrative relief granted under procedures superseded by this subpart, must contain the information required by paragraph (a) of this section.

#### § 107.107 Administrative review.

In the case of a written application for an exemption submitted as provided in § 107.103(b) or the renewal of an exemption submitted as provided in § 107.105, the Director, OHMO, reviews it to determine whether it is complete and conforms with the requirements of this subpart. This determination will be made within 30 days of the receipt of an exemption application and within 15 days of the receipt of a renewal application. If it is not returned to the applicant by the end of that period, it will be processed as provided in § 107.109. If an application is returned, the applicant will be informed in what respects the application is incomplete.

#### § 107.109 Processing of application.

(a) After an application for an exemption or renewal of an exemption is determined to be complete, the Director, OHMO, docket the application and publishes a notice in the FEDERAL REGISTER affording an opportunity for interested persons to comment. All comments received before the close of the comment period are considered before final action is taken on an application.

(b) No public hearing, argument, or other formal processing is held directly on an application filed under this subpart before its disposition under this section. However, during the processing of an application the Director, OHMO, may require the applicant to supply additional information.

(c) If the Director, OHMO, determines that the application does not contain adequate justification, he denies it and notifies the applicant in writing, together with the reasons therefor. He also publishes in the FEDERAL REGISTER a notice of the denial.

(d) If the Director, OHMO, determines that the application contains adequate justification, he grants it subject to the conditions set forth in Appendix B to this subpart and such other terms as he considers necessary, and notifies the applicant in writing. He also publishes in the FEDERAL REGISTER a notice of the grant.

(e) If the Director, OHMO, determines that an application concerns a matter of such general applicability and future ef-

fect as to warrant being made the subject of rule making, he may initiate rule making under Part 102 of this chapter in addition to or in lieu of granting or denying the application.

#### § 107.111 Party to an exemption.

(a) Any person who is eligible to apply under § 107.103 for an exemption may apply to the Director, OHMO, to be made a party to an application filed under that section or to an exemption granted under § 107.109(d).

(b) Each application filed under this section must—

(1) Be submitted to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Exemptions Branch;

(2) Identify the exemption application or exemption to which the applicant seeks to become a party; and

(3) State the name, address and telephone number of the applicant.

(c) The applicant becomes a party to an exemption application or exemption if the Director, OHMO, determines that—

(1) The applicant is a person who is eligible to apply under § 107.103 for an exemption; and

(2) The exemption application or exemption to which the applicant seeks to become a party concerns a matter of a continuing nature and does not depend upon information entitled to confidential treatment.

(d) The Director, OHMO, publishes in the FEDERAL REGISTER a notice of each application received, each initial determination made and each renewal granted under this section.

(e) A person who becomes a party to an exemption under this section is subject to terms of that exemption, including the expiration date stated therein. If a party to an exemption wishes to renew his status as a party to an exemption, the procedures set forth in §§ 107.105 through 107.109 with respect to an application for renewal of an exemption apply.

#### § 107.113 Application for and processing of emergency exemption.

(a) Any person who is subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 who seeks an exemption from any of those requirements on the basis of an existing emergency shall apply for that exemption through the appropriate Department of Transportation official listed in Appendix A to this subpart.

(b) An application submitted under this section must include such supporting information with respect to each of the topics specified in § 107.103 (2) through (11) as the receiving Department of Transportation official considers necessary for processing the application.

(c) Upon receipt of all of the information necessary for processing the application, the receiving Department of Transportation official shall transmit to the Director, OHMO, by the most rapid available means of communication, his

evaluation as to whether an emergency exists and his recommendations with respect to the conditions to be included in the exemption. If the Director, OHMO, determines that an emergency exists and that there is adequate justification for the exemption, he grants the exemption subject to the applicable conditions set forth in Appendix B to this subpart and such other terms as he considers necessary, and immediately notifies the applicant. If the Director, OHMO, cannot determine that an emergency exists or that there is not adequate justification for the exemption, he immediately so notifies the applicant.

#### § 107.115 Determination of existing emergency.

(a) The Director, OHMO, shall determine that an emergency exists if, on the basis of information submitted in the application and his own investigation, he finds that—

(1) Existing conditions require the hazardous material concerned to be transported in commerce for the protection of life or property (other than the hazardous material to be transported); and

(2) The protection of life or property to be provided by the hazardous material would not be possible if the application is processed on a routine basis.

(b) The Director, OHMO, may determine that an emergency exists if, on the basis of information submitted in the application, he finds that—

(1) Existing conditions require the hazardous material concerned to be transported in commerce to prevent or minimize serious economic loss; and

(2) The prevention or minimizing of serious economic loss to be provided by the hazardous material would not be possible if the application is processed on a routine basis.

(c) In determining what constitutes serious economic loss under paragraph (b) of this section, the Director, OHMO, considers the nature and extent of the expected loss.

#### § 107.117 Withdrawal.

(a) An applicant may withdraw an application at any time prior to it being finally determined. When an application is withdrawn after publication of the notice of application in the FEDERAL REGISTER, the Director, OHMO, publishes a notice of withdrawal in the FEDERAL REGISTER.

(b) Except for documents for which confidential treatment was requested by the applicant, withdrawal of an application does not authorize the removal of any related records from the dockets or files of the OHMO.

#### § 107.119 Termination.

(a) An exemption and any renewal thereof terminates according to its terms but not later than two years after the date of issuance unless terminated sooner pursuant to paragraph (b) or (c) of this section.

(b) The Director, OHMO, may suspend an exemption if he determines that—



(1) An activity under the exemption is not being performed in accordance with the terms of the exemption; or

(2) On the basis of information not available at the time it was granted, an amendment to the terms of the exemption is necessary to adequately protect against risks to life and property.

(c) The Director, OHMO, terminates an exemption if he determines that—

(1) The exemption is no longer consistent with the public interest;

(2) The exemption is no longer necessary because of an amendment to the regulations; or

(3) The exemption was granted on the basis of false, fraudulent, or misleading representations or information.

(d) Unless the Director, OHMO, believes that immediate suspension or termination is necessary to abate the risk of an imminent hazard, he notifies the holder in writing of the reasons therefor and provides the holder an opportunity to show why the exemption should not be suspended or terminated, before he suspends or terminates an exemption under paragraph (b) or (c) of this section.

#### § 107.121 Appeal.

Any applicant for an exemption or the renewal of an exemption aggrieved by an action taken by the Director, OHMO, under this subpart and any holder of an exemption suspended or terminated by the Director, OHMO, under § 107.119 (b) or (c) may file an appeal with the Director, MTB. The appeal must be filed within 30 days of service of notification of that action, suspension or termination. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate process is completed by the issuance of an order by the Director, MTB, granting or denying the appeal.

#### § 107.123 Availability for public inspection.

(a) Information relevant to an application under this part, including the application and supporting data, memoranda of any informal meetings with the applicant, and the grant or denial of the application is available for public inspection, except as specified in paragraph (b) of this section, at the Office of Hazardous Materials Operations, Trans Point Building, 2100 2nd Street, SW., Washington, D.C. 20590. Copies of available information may be obtained, as provided in Part 7 of this title.

(b) Information made available for inspection does not include materials which the Director, OHMO, determines should be withheld from public disclosure under § 107.5 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and Part 7 of this title.

#### § 107.125 Transition period and procedures for certain air commerce situations in Alaska.

(a) Notwithstanding any other provision of this subpart, an application for

an exemption from a requirement of 14 CFR Part 103 which—

(1) Does not involve radioactive materials;

(2) Is for one or more flights of civil aircraft to or between places in the State of Alaska to be completed before January 16, 1976; and

(3) Seeks priority treatment on the basis of an existing emergency or because other forms of transportation are impracticable

may be initiated through the appropriate Federal Aviation Administration official specified in Appendix A to this subpart. That official, upon receiving the information necessary for processing the application, will transmit to the official designated by the Director, OHMO, for that purpose in Alaska his evaluation as to whether an emergency exists or other forms of transportation are impracticable and his recommendations with respect to whether the exemption should be granted and any conditions that should be included therein. If the official designated by the Director, OHMO, determines that an emergency exists or that other forms of transportation are impracticable, and that the proposed flight or flights can be made safely, he grants the exemption subject to such conditions as he considers necessary and immediately notifies the applicant.

#### APPENDIX A

LIST OF DEPARTMENT OF TRANSPORTATION OFFICIALS THROUGH WHOM APPLICATIONS FOR EXEMPTIONS SEEKING PRIORITY TREATMENT ON THE BASIS OF EXISTING EMERGENCIES MAY BE INITIATED BY TELEPHONE

##### AIR CARRIERS

The Federal Aviation Administration Flight Standards District Office or Air Carrier District Office which serves the place where the flight[s] concerned will originate or which is responsible for overall inspection of the carrier's operations.

##### AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

The Federal Aviation Administration Flight Standards District Office or General Aviation District Office which serves the place where the flight[s] concerned will originate or which is responsible for overall inspection of the operator's operations.

##### MOTOR CARRIERS

Chief, Regulations Division, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Day 202/426-1700 and Night 202/426-1830.

##### RAIL CARRIERS

Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, Washington, D.C. 20590. Day 202/426-0897 or 426-2748 and Night 202/426-1830.

##### WATER CARRIERS

Chief, Packaged Cargo Branch, Cargo and Hazardous Materials Division, United States Coast Guard, Washington, D.C. 20590. Day or Night 202/426-1830.

#### APPENDIX B

##### STANDARD CONDITIONS APPLICABLE TO EXEMPTIONS

###### PACKAGES, CONTAINERS, SHIPMENTS

Exemptions from the regulations governing packages, containers, and the preparation and offering of hazardous materials for shipment are subject to the following conditions:

(1) The outside of each package must be plainly and durably marked "DOT-E" followed by the number assigned. On portable tanks, cargo tanks and tank cars, the markings must be in letters at least two inches high on a contrasting background.

(2) Each shipping paper issued in connection with any shipment made under an exemption must bear the notation "DOT-E" followed by the number assigned and the entries required by § 173.427 of this chapter.

(3) When an exemption issued to a shipper contains special carrier requirements, the shipper shall furnish a copy of the exemption to the carrier before or at the time a shipment is tendered.

###### FLIGHTS OF CIVIL AIRCRAFT

Exemptions from the regulations governing the transportation of hazardous materials on civil aircraft are subject to the following conditions:

(1) No person other than a required flight crewmember, an FAA inspector, the shipper or consignee of the material or a representative of the shipper or consignee so designated in writing, or a person necessary for handling the material may be carried on the aircraft.

(2) The operator of the aircraft must have advance permission from the owner or operator of each manned airport where the material is to be loaded or unloaded or where the aircraft is to land while the material is on board.

(3) At any airport where the airport owner or operator or authorized representative thereof has designated a location for loading or unloading the material concerned, the material may not be loaded or unloaded at any other location.

(4) If the material concerned can create destructive forces or have lethal or injurious effects over an appreciable area as a result of an accident involving the aircraft or the material, the loading and unloading of the aircraft and its operation in takeoff, enroute, and in landing must be conducted at a safe distance from heavily populated areas and from any place of human abode or assembly.

(5) If the aircraft is being operated by a holder of a certificate issued under Part 121 or Part 135 of title 14, CFR, operations must be conducted in accordance with conditions and limitations specified in the certificate holder's operations specifications or operations manual accepted by the FAA. If the aircraft is being operated under Part 91 of title 14, CFR, operations must be conducted in accordance with an operations plan accepted and acknowledged in writing by the operator's FAA District Office.

(6) Each crewmember of the aircraft must be provided written instructions on the conditions and limitations of the operation being conducted.

(7) The aircraft and the loading arrangement to be used must be approved for safe carriage of the particular materials concerned by the FAA District Office holding the operator's certificate and charged with overall inspection of its operations or the appropriate FAA District Office serving the place where the material is to be loaded.



## RULES AND REGULATIONS

(8) When explosives are carried, the operator of the aircraft shall obtain route approval from the FAA Inspector in the operator's FAA District Office.

**PART 170—RULE-MAKING PROCEDURES  
OF THE HAZARDOUS MATERIALS REG-  
ULATIONS BOARD**

§§ 170.13 and 170.15 [Revoked]

2. In Subchapter C, Part 170—Rule-making Procedures of the Hazardous Materials Regulations Board §§ 170.13 and 170.15 are revoked.

**PART 171—GENERAL INFORMATION  
AND REGULATIONS**

§ 171.16 [Revoked]

3. In Subchapter C, Part 171—General Information and Regulations, § 171.6 is revoked.

Issued in Washington, D.C., on October 10, 1975.

JAMES T. CURTIS, Jr.,

*Director,*

*Materials Transportation Bureau.*

[FR Doc.75-27806 Filed 10-14-75;8:45 am]